TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

FISCAL NOTE

SB 2345 - HB 2398

February 7, 2018

SUMMARY OF BILL: Authorizes financial institutions to carry forward unused franchise and excise (F&E) tax credits earned pursuant to Tenn. Code Ann. § 67-4-2109(h)(1)(B) and (h)(2)(B), on the unpaid principal balance of qualified loans and low-rate loans made to eligible housing entities for 15 years beyond the year in which the qualifying financial transaction was made and in which the tax credit was earned.

ESTIMATED FISCAL IMPACT:

Decrease State Revenue – Exceeds $100,000/FY18-19
Exceeds $500,000/FY19-20
Exceeds $1,000,000/FY20-21 and Subsequent Years

Assumptions:

- Pursuant to Tenn. Code Ann. § 67-4-2109(h)(1) and (2), an F&E tax credit can be earned by a financial institution equal to the following:
  - Five percent (5%) of a qualified loan or qualified long-term investment made to an eligible housing entity for any eligible activity; or
  - Three percent (3%) annually of the unpaid principal balance of a qualified loan made to an eligible housing entity for any eligible activity as of December 31 of each year for the life of the loan or fifteen (15) years, whichever is earlier; and
  - Ten percent (10%) of a grant, contribution, or qualified low-rate loan made to an eligible housing entity for any eligible activity; or
  - Five percent (5%) annually of the unpaid principal balance of a qualified low-rate loan made to an eligible housing entity for any eligible activity as of December 31 of each year for the life of the loan or fifteen (15) years, whichever is earlier.
- The qualified F&E tax credit earned by the financial institution is to be used against the sum total of the institution's F&E tax liability.
- Under current law, pursuant to Tenn. Code Ann. § 67-4-2109(h)(8), the F&E tax credit allowed on the unpaid principal balance ("b" and "d" above) must be used in the same year in which the credit was earned, and cannot be carried forward to be used against future F&E tax liabilities.
- Pursuant to this legislation, any unused F&E tax credits earned pursuant to "b" or "d" above could be carried forward and used against future franchise and excise tax liabilities, for 15 years following the year in which such credit was earned. As a result, certain institutions will be able to offset more of their long-term F&E tax liabilities

under the provisions of this legislation, when they would not be able to do so under current law.
- The applicable F&E tax credit program is administered by the Department of Revenue (DOR).
- According to the DOR, loans provided by taxpayers currently claiming this F&E tax credit were examined to determine the possible fiscal impact of the proposed language.
- It was determined that most of the larger taxpayers claiming the F&E tax credit were utilizing it to the full extent allowed under current law; however, unused credit remained, which could not be utilized by the taxpayer under current law to offset F&E tax liabilities. The DOR has indicated that utilization of these unused F&E tax credits pursuant to the proposed language would be small initially, but would grow exponentially in outlying years as millions of unused credits would accumulate and be applied to future F&E tax liabilities.
- According to the DOR, loans provided by small-to-medium taxpayers currently claiming the F&E credit were also examined.
- DOR estimates that several of these taxpayers currently hold investments in qualified low-rate loans, which by having unpaid principal balances pursuant to Tenn. Code Ann. § 67-4-2109(h)(1)(B) and (h)(2)(B), allow the taxpayer to credit a percentage of such unpaid balances against F&E tax liability; however, such credits, if unused, do not carryforward past the year in which they are earned. This legislation will allow for the carryforward of unused credits earned, and is assumed to be retroactive in effect, allowing for credits earned in the past to be used against current F&E tax liabilities, thereby resulting in an immediate decrease in F&E tax liabilities.
- The Fiscal Review Committee staff does not have access to the applicable taxpayer data supporting this analysis due to taxpayer confidentially and cannot independently verify its accuracy.
- The extent to which future F&E tax liabilities would be reduced in the future by the proposed carryforward of F&E tax credits cannot be determined because of multiple unknown scenarios; however, it is reasonably estimated that such F&E tax credits allowed under the proposed language would result in a decrease in state tax revenue exceeding $100,000 in FY17-19, exceeding $500,000 in FY19-20, and exceeding $1,000,000 in FY20-21 and subsequent years.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

Krista M. Lee

Krista M. Lee, Executive Director

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